

Title	New Uniform Statewide Rules for Class Actions (adopt Cal. Rules of Court, rules 1850-1859 and 1861 and amend and renumber rule 365)
Summary	The proposed new rules would provide uniform statewide rules for the management and conduct of class actions and would preempt existing local court rules. Existing rule 365 would be renumbered and amended to add a subdivision providing for class notice, in some circumstances, when a case certified as a class action is dismissed.
Source	Civil and Small Claims Advisory Committee and Complex Litigation Subcommittee
Staff	Susan Goins 415-865-7990 Alice Vilardi 415-865-7661
Discussion	<p>No uniform statewide rules for class actions currently exist. Several counties have local rules for class actions. Rule 981.1 of the California Rules of Court, which became effective July 1, 2000, preempts all local court rules in civil cases in the field of pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies and the form and format of papers. The rule contains a temporary exemption for local rules relating to class actions, among other rules, which will expire on January 1, 2002.</p> <p>The need for rules pertaining to class actions arises from the complexity of handling such cases and the absence of specific procedures in the relevant California statutes. Code of Civil Procedure section 382 authorizes class actions generally but does not contain procedures for conducting these actions. As a result, litigants and judicial officers have relied on related statutes, rules and case law for guidance on procedural issues.</p> <p>One statute litigants and judges have relied on for guidance on procedural issues arising in class actions is the Consumer Legal Remedies Act (Civ. Code §1750 et seq. [CLRA]). Another source of guidance has been rule 23 of the Federal Rules of Civil Procedure.</p> <p>The CLRA provides a private right of action for consumers who have been damaged as a result of unfair or deceptive business practices. (Civ. Code. § 1780.) Section 1781 of the CRLA allows for consumer class actions and sets forth certain steps for proceeding with the action as a class action. The California Supreme Court has approved use of the procedures outlined in section 1781 for managing class action suits</p>

generally. See *Richmond v. Dart Industries* (1981) 29 Cal. 3d 462, 469; *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 820-21. Section 382 of the Code of Civil Procedure authorizes class suits “when the question is one of a common or general interest of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” The party seeking certification has the burden of establishing the existence of both an ascertainable class and a well-defined community of interest among the class members. *Washington Mutual Bank v. Superior Court* (2001) 24 Cal. 4th 906; *Linder v. Thrifty Oil* (2000) 23 Cal. 4th 429, 435.

The attached rules are intended to provide a means to manage and conduct class actions. They include:

- A requirement that a complaint include in the caption the designation “Class Action” and contain a separate heading under which the plaintiff describes how the requirements for class certification are met. (Rule 1851) The purpose of this rule is to alert the court and opposing parties at the time of filing and service that the action is intended as a class action, thus triggering the rules in this chapter.
- A provision for one or more informal case conferences. (Rule 1852) The first case conference may be held early in a case and may be noticed by any party or by the court. The purpose of an informal conference is to allow the parties to convene early in the proceedings to work out stipulations on potentially adversarial topics such as class issues, the conduct and scheduling of discovery, the scheduling of hearings, and other matters. The conference is designated as an “informal conference” so as to be distinguished from the “case management conference” permitted by Government Code, section 68070 and Cal. Rules of Court, rule 212 and the “initial case management conference” authorized in section 19(e) of the Judicial Administration Standards.
- A provision for a plaintiff to move to certify a class and to determine the existence of and certify subclasses. (Rule 1854) *The committee is particularly interested in comments on whether the right to move for class certification should be limited to a plaintiff or whether any party should be permitted to move for class certification. The committee is also interested in comments on whether this rule (or another rule) should provide for a motion to decertify a class or modify an order certifying a class.* This rule allows a motion to certify a class as soon as practicable and allows

the court discretion to establish a deadline for filing the motion, taking into account discovery that may be necessary. The notice period and page limits for a motion to certify a class are the same as those in California Code of Civil Procedure, section 437c, which provides for summary judgment motions. The Committee believes that the additional time and pages for briefing are warranted because of the potential issues involved and the nature of the action. *The committee seeks comments on whether this rule (or any rule) should set forth the prerequisites and requirements for maintainability of a class action.*

- If an action is certified as a class action, a provision for an order describing the class and for a class action to be limited to particular issues. (Rule 1855.)
- A provision for notice to class members that the class has been certified. (Rule 1856) This rule gives the court discretion in determining whether notice is necessary, and, if notice is ordered, which party must give notice. It requires the plaintiff to submit a statement regarding class notice and a proposed notice and specifies the matters to address in the statement, including whether class members may exclude themselves from the class (an “opt out” class action) and which parties should bear the costs of notice. This rule also provides for a court order, following certification, addressing whether notice is necessary; whether class members may exclude themselves from the action; the time, manner and content of the notice; and the parties responsible for the costs of notice. The rule provides specific criteria for the court to consider in determining the manner of notice.

While California statutes do not explicitly recognize the three categories for maintaining a class action described in Federal Rules of Civil Procedure, rule 23, courts have used these categorical distinctions to determine whether notice and the right to opt out of a class is required. For instance, the court has held that if a state class action meets the criteria of rule 23(b)(1) or (b)(2), class members need not be given the right to opt out of the class. *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1603; *Frazier v. City of Richmond* (1986) 184 Cal.App.3d 1491, 1499. Likewise, when a class action meets the criteria of rule 23(b)(1) or (b)(2), notice to class members is not compulsory.

Thus rule 1856 gives the trial court discretion to order notice to class

members, depending on the type of action and other significant factors. The rule does not require notice to each member of the class in all circumstances. If the class action is brought primarily for injunctive or declaratory relief (similar to Federal Rules of Civil Procedure, rule 23(b)(2)), notice of the pendency of the action need not be given to the class, unless the court finds that notice is necessary to protect the interests of the represented parties and that the cost of notice will not prevent the action from going forward.

The committee would particularly appreciate comments on the rule's provisions for determining when notice is necessary, to whom notice is to be given and the content of the notice.

- A provision requiring a court order before discovery is sought from a member of a class who is not a representative party or who has not appeared. (Rule 1858) This rule is designed to protect unnamed and unrepresented class members from unduly burdensome discovery requests by allowing the trial court to regulate discovery against unnamed parties. See *Southern California Edison Co. v. Superior Court* (1972) Cal.3d 832, 840.
- A provision requiring court approval for the settlement of a class action. (Rule 1859) The purpose of this rule is to provide a means to determine the fairness of a class settlement and to give notice of the proposed settlement class members and to allow class members to be heard.
- An amendment to rule 365 (now renumbered as rule 1860) addressing the dismissal of class actions. The amendment provides for notice to the class, as specified by the court, depending on the circumstances, or dismissal without notice if the court finds that class members will not be prejudiced by the dismissal.

The committee would particularly appreciate comments on when and to whom notice is to be given of the dismissal of a class action.

PROPOSAL

Rules 1850—1859 and 1861 of the California Rules of Court would be adopted and rule 365 would be amended and renumbered, effective January 1, 2002, to read:

CHAPTER 2. MANAGEMENT OF CLASS ACTIONS

Rule 1850. Applicability of rules

- (a) [Class actions] The rules contained in Chapter 2 apply to each class action brought under Civil Code sections 1750 et seq. or Code of Civil Procedure section 382 until such time as the court finds the action is not maintainable as a class action or revokes a prior certification of the class.
- (b) [Relief from compliance with rules] In an appropriate case, the court, on its own motion or on motion of any named party, may grant relief from compliance with these rules.

Rule 1851. Form of complaint

- (a) [Caption of pleadings] A complaint for or against a class party must include in the caption the designation “CLASS ACTION.” This designation must be in capital letters on the first page of the complaint, immediately below the file number but above the description of the nature of the complaint.
- (b) [Heading and class action allegations] The complaint in a class action must contain a separate heading “CLASS ACTION ALLEGATIONS,” under which the plaintiff describes how the requirements for class certification are met.

Rule 1852. Informal case conference

- (a) [Purpose] One or more informal conferences between the court and counsel for the parties may be held in chambers or open court to discuss class issues, conduct and scheduling of discovery, scheduling of hearings, and other matters. No evidence may be presented at the conference, but counsel must be fully prepared to discuss class issues and must possess authority to enter into stipulations.

- 1 **(b) [Notice by the parties]** Notice of the conference may be given by any party.
2 If notice is given by a named plaintiff, notice must be served on all named
3 parties to the action. If notice is given by a defendant, notice must be served
4 on only the parties who have appeared. Within 10 days after receipt of the
5 notice, plaintiff must serve a copy on each named party who has not appeared
6 in the action, and must submit a declaration of service. If plaintiff is unable to
7 serve any party, plaintiff must submit a declaration stating the reasons for
8 failure of service.
9
10 **(c) [Notice by the court]** The court may give notice of the conference to the
11 plaintiff. Within 10 days after receipt of the notice, plaintiff must serve a copy
12 on all parties who have been served, whether they have appeared or not, and
13 must submit a declaration of service. If plaintiff is unable to serve any party,
14 plaintiff must submit a declaration stating the reasons for failure of service.
15
16 **(d) [Timing of notice]** The notice must be filed and served on the parties at least
17 20 days prior to the scheduled date of the conference.
18
19 **(e) [Timing of conference]** A conference may be held at any time after the first
20 defendant has appeared. Prior to selecting a conference date, the party noticing
21 the conference must (1) obtain prior approval from the clerk of the department
22 assigned to hear the class action and (2) make reasonable efforts to
23 accommodate the schedules of all parties entitled to receive notice under
24 subdivision (b).
25
26 **(f) [Subsequent conferences]** Subsequent conferences may be scheduled as
27 necessary.
28
29

30 **Rule 1853. Conference order**

- 31
32 **(a) [Scope of order]** At the conclusion of the conference, the court may make an
33 order:
34
35 (1) Approving any stipulations of the parties;
36
37 (2) Establishing a schedule for discovery;
38
39 (3) Setting the date for the hearing on class certification;
40
41 (4) Setting the dates for any subsequent informal conferences; and
42
43 (5) Addressing any other matters related to management of the case.

1 **(b) [Order binding]** The conference order is binding upon all parties unless
2 modified or terminated.

3
4
5 **Rule 1854. Motion to determine class certification**

6
7 **(a) [Purpose]** Any plaintiff may file a motion to:

8
9 (1) Certify a class and

10
11 (2) Determine the existence of and certify subclasses.

12
13 **(b) [Timing of motion, hearing, extension, deferral]** A motion for class
14 certification must be filed as soon as practicable. In its discretion, the court
15 may establish a deadline for the filing of the motion pursuant to the stipulation
16 of the parties, as part of the informal conference, or as part of other case
17 management proceedings. Any such deadline must take into account
18 discovery proceedings that may be necessary to the filing of the motion.

19
20 **(c) [Format and filing of motion]**

21
22 (1) Notice of a motion for class certification must be filed and served on all
23 parties to the action at least 28 days prior to the date appointed for
24 hearing. Any opposition to the motion must be served and filed 14 days
25 preceding the noticed or continued hearing, unless the court for good
26 cause orders otherwise. Any reply to the opposition must be served and
27 filed not less than 5 days preceding the noticed or continued date of the
28 hearing, unless the court for good cause orders otherwise. The provisions
29 of Code of Civil Procedure section 1005 otherwise apply.

30
31 (2) An opening or responding memorandum of points and authorities filed
32 with respect to a motion for class certification must not exceed 20 pages.
33 A reply memorandum must not exceed 15 pages. The provisions of rule
34 313 otherwise apply.

35
36 (3) The documents in support of a motion for class certification consist of the
37 notice of motion; a memorandum of points and authorities in support of
38 the motion; evidence in support of the motion in the form of declarations
39 of counsel, class representatives, or other appropriate declarants; and any
40 requests for judicial notice. The documents in opposition to the motion
41 consist of the opposing party's memorandum of points and authorities;
42 the opposing party's evidence in opposition to the motion, including any

1 declarations of counsel or other appropriate declarants; and any requests
2 for judicial notice.

3
4 (d) [Presentation of evidence] Evidence to be considered at the hearing must be
5 presented in accordance with rule 323.

6
7 (e) [Stipulations] The parties should endeavor to resolve any uncontroverted
8 issues by written stipulation before the hearing. If all class issues are resolved
9 by stipulation of the named parties and approved by the court before the
10 hearing, no hearing on class certification is necessary.

11
12
13 **Rule 1855. Class action order**

14
15 (a) [Class described] An order certifying a class must contain a description of the
16 class and any subclasses.

17
18 (b) [Limited issues and subclasses] When appropriate, an action may be
19 maintained as a class action limited to particular issues. A class may be
20 divided into subclasses.

21
22
23 **Rule 1856. Necessity for and content of notice to class members**

24
25 (a) If the class is certified, the court may require either party to notify the class of
26 the action in the manner specified by the court.

27
28 (b) [Statement regarding class notice] The plaintiff must submit a statement
29 regarding class notice and a proposed notice to class members. The statement
30 must include the following items:

31
32 (1) Whether notice is necessary;

33
34 (2) Whether class members may exclude themselves from the action;

35
36 (3) The time and manner in which notice should be given;

37
38 (4) A proposal for which parties should bear the costs of notice; and,

39
40 (5) If cost shifting or sharing is proposed under subdivision (4), an estimate,
41 of the cost involved in giving notice.
42

1 (c) [Order] Upon certification of a class, or as soon thereafter as practicable, the
2 court must make an order determining:

3
4 (1) Whether notice to class members is necessary;

5
6 (2) Whether class members may exclude themselves from the action;

7
8 (3) The time and manner of notice;

9
10 (4) The content of the notice; and

11
12 (5) The parties responsible for the cost of notice.

13
14 (d) [Content of class notice] The content of the class notice is subject to court
15 approval. If class members are to be given the right to request exclusion from
16 the class, the notice must include the following:

17
18 (1) A brief explanation of the case, including the basic contentions or denials
19 of the parties;

20
21 (2) A statement that the court will exclude the member from the class if the
22 member so requests by a specified date;

23
24 (3) A procedure for the member to follow in requesting exclusion from the
25 class;

26
27 (4) A statement that the judgment, whether favorable or not, will bind all
28 members who do not request exclusion; and

29
30 (5) A statement that any member who does not request exclusion may, if the
31 member so desires, enter an appearance through counsel.

32
33 (e) [Manner of giving notice] In determining the manner of the notice, the court
34 must consider:

35
36 (1) The interests of the class;

37
38 (2) The type of relief requested;

39
40 (3) The stake of the individual class members;

41
42 (4) The cost of notifying class members;

1 (5) The resources of the parties;

2
3 (6) The possible prejudice to class members who do not receive notice; and

4
5 (7) The res judicata effect on class members.

6
7 If personal notification is unreasonably expensive or the stake of individual class
8 members is insubstantial, or if it appears that all members of the class cannot be
9 notified personally, the court may order a means of notice reasonably calculated to
10 apprise the class members of the pendency of the action—for example, publication
11 in a newspaper or magazine; broadcasting on television, radio, or the Internet; or
12 posting or distribution through a trade or professional association, union, or public
13 interest group.

14
15
16 **Rule 1857. Orders in the conduct of class actions**

17
18 (a) In the conduct of class actions the court may make orders that:

19
20 (1) Require—for the protection of the members of the class, or otherwise for
21 the fair conduct of the action—that some or all of the members be given notice
22 in such manner as the court may direct of any step in the action, or of their
23 opportunity to seek to appear and indicate whether they consider the
24 representation fair and adequate, or of the proposed extent of the judgment; or

25
26 (2) Impose conditions on the representative parties or on intervenors;

27
28 (3) Require that the pleadings be amended to eliminate allegations as to
29 representation of absent persons, and that the action proceed accordingly;

30
31 (4) Facilitate the management of class actions through consolidation,
32 severance, coordination, bifurcation, intervention, or joinder; and

33
34 (5) Address similar procedural matters.

35
36 (b) The orders may be altered or amended as necessary from time to time.

37
38
39 **Rule 1858. Discovery from unnamed parties**

40
41 Discovery from a member of a class who is not a representative party or who has not
42 appeared may not be sought without a court order. In deciding whether discovery should
43 be allowed, the court must consider, among other relevant factors:

- 1
2 (a) The timing of the request;
3
4 (b) The subject matter to be covered;
5
6 (c) The materiality of the information being sought;
7
8 (d) The likelihood that class members have such information;
9
10 (e) The possibility of reaching factual stipulations that eliminate the need for such
11 discovery;
12
13 (f) Whether representatives of the class are seeking discovery on the subject to be
14 covered; and
15
16 (g) Whether discovery will result in annoyance, oppression, or undue burden or
17 expense for the members of the class.
18
19

20 **Rule 1859. Settlement of class actions**
21

- 22 (a) [Court approval; hearing] A settlement or compromise of an entire class
23 action, or of a cause of action in a class action, requires the approval of the
24 court after hearing.
25
26 (b) [Attorney fees] Any agreements, express or implied, that have been entered
27 into with respect to the payment of attorney's fees or the submission of an
28 application for the approval of attorney's fees must be set forth in full in any
29 application for approval of the dismissal or settlement of an action that has
30 been certified as a class action.
31
32 (c) [Motion for settlement hearing] Any party to a settlement agreement may
33 submit a written notice of motion for preliminary approval of the settlement.
34 The settlement agreement and proposed notice to class members must be filed
35 with the motion, and the proposed order must be lodged with the motion.
36
37 (d) [Order certifying provisional settlement class] The court may make an
38 order approving or denying certification of a provisional settlement class after
39 settlement hearing.
40
41 (e) [Order for final approval hearing] If the court grants preliminary approval,
42 its order must include the time, date, and place of the final approval hearing;

1 the notice to be given to the class; and other matters deemed necessary for the
2 proper conduct of a settlement hearing.

3
4 (f) **[Class notice]** If the court has certified the action as a class action, notice of
5 the final approval hearing must be given to the class members in the manner
6 specified by the court. The notice must contain an explanation of the proposed
7 settlement and procedures for class members to follow in filing written
8 objections to it and in arranging to appear at the settlement hearing and state
9 any objections to the proposed settlement.

10
11 (g) **[Conduct of final approval hearing]** Prior to approval, the court must
12 conduct an inquiry into the fairness of the proposed settlement. The court must
13 employ the procedures that it deems appropriate to ascertain the fairness of the
14 proposed settlement, including but not limited to an in-chambers conference,
15 the examination of documents or witnesses, the presentation of objections by
16 class members, and other evidence.

17
18 (h) **[Judgment]** If the court approves the settlement agreement after the final
19 approval hearing, the court must make and enter judgment. The judgment
20 must include a provision for the retention of the court's jurisdiction over the
21 parties to enforce the terms of the judgment.

22
23
24 **Rule 365 1860. Dismissal of class actions**

25
26 (a) **[Court approval]** A dismissal of the ~~an~~ entire class action, or of any party or
27 cause of action in a class action, ~~shall be made only on~~ requires court approval.
28 Requests for dismissal ~~shall~~ must be accompanied by an affidavit or a
29 declaration setting forth the facts on which the party relies. The affidavit or
30 declaration ~~shall~~ must clearly state whether consideration, direct or indirect, is
31 being given for the dismissal and ~~shall~~ must describe the consideration in
32 detail.

33
34 (b) **[Hearing]** The court may grant the request without a hearing. If the request is
35 disapproved, notice of tentative disapproval ~~shall~~ must be sent to the attorneys
36 of record. Any party may seek, within 15 calendar days of the service of the
37 notice of tentative disapproval, a hearing on the request. If no hearing is
38 sought within that period, the request for dismissal ~~shall~~ will be deemed
39 denied.

40
41 (c) **[Class notice]** If the court has certified the class, and notice of the pendency
42 of the action has been provided to class members, notice of the dismissal must
43 be given to the class in the manner specified by the court. If the court has not

1 ruled on class certification, or if notice of the pendency of the action has not
2 been provided to class members in a case in which such notice was required,
3 notice of the proposed dismissal may be given in the manner and to those class
4 members specified by the court, or the action may be dismissed without notice
5 to the class members if the court finds that the dismissal will not prejudice
6 them.

7
8
9 **Rule 1861. Judgment**

10
11 The judgment in an action maintained as a class action must include and describe those
12 whom the court finds to be members of the class. Notice of the judgment must be given
13 to the class in the manner specified by the court.